

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DALE B. ANDERSON
Claimant

VS.

STATE OF KANSAS
Respondent
Self-Insured

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Docket No. 268,320

ORDER

Claimant appeals from the August 12, 2002 Award entered by Administrative Law Judge (ALJ) Bruce E. Moore. The Appeals Board (Board) heard oral argument on February 11, 2003.

Appearances

Joseph Seiwert of Wichita, Kansas, appeared for claimant. Richard L. Friedeman of Great Bend, Kansas, appeared for respondent.

Record and Stipulations

The Board has considered the record and adopted the stipulations listed in the Award.

Issues

The nature and extent of claimant's disability is the issue. The Award grants benefits for a 27 percent scheduled injury to the lower leg.¹ This percentage of disability is based on the functional impairment rating of Dr. C. Reif Brown. Claimant contends that

¹ K.S.A. 44-510d(a)(15).

the more credible impairment rating is the ten percent to the body as a whole opinion given by Dr. Pedro A. Murati. And, therefore, he is entitled to permanent partial general disability compensation based on a work disability.² Conversely, respondent argues that the ALJ's Award should be affirmed.

Findings of Fact and Conclusions of Law

After reviewing the record and considering the arguments, the Board concludes the Award should be affirmed. The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ.

Claimant worked for respondent as a corrections officer and electronics technician at the Hutchinson Correctional Facility. On November 3, 1998, claimant fell about 25 to 30 feet, fracturing his left leg at the ankle and tearing the lateral collateral ligament. Two attempts were made to surgically repair these injuries, first by Dr. Lais and then by Dr. Steven Howell. Following a period of rehabilitation with Dr. Lais, including physical therapy, claimant was rated and released to return to work with restrictions. Thereafter, claimant described an onset of pain in both knees and right ankle, in addition to the left ankle. Claimant attributed this worsening, in part, to over- compensation for his injured left ankle and an antalgic gait. Claimant also attributed the left knee injury to the initial fall. Claimant described the left knee symptoms as a worsening or aggravation of a preexisting condition too. Respondent was unable or unwilling to accommodate claimant's permanent restrictions.³ Ultimately, claimant's work-related injury resulted in the loss of his employment.⁴

Dr. Brown may have understated claimant's impairment by failing to obtain the stress x-ray studies needed to objectively diagnose and document any laxity of ligaments, loss of cartilage or other rateable knee abnormality. Dr. Brown acknowledged that claimant exhibited crepitus in both knees and chondromalacia, but stated that a long standing bilateral patella tracking problem was most likely the reason for claimant's pain and weakness in his knees. Dr. Brown obviously considered those complaints to be legitimate. Nevertheless, Dr. Brown said he could not relate those knee symptoms to this accident.

² K.S.A. 44-510e(a).

³ R.H. Trans., Resp. Ex. A, B, C and D. (Claimant was offered reassignment to an Office Assistant III position, but it required stair climbing and kneeling. The job was never established to be within his restrictions.)

⁴ R.H. Trans., Cl. Ex. 1.

Given claimant's persistent symptoms, which the Board likewise finds credible, Dr. Murati's findings appear legitimate. But the use of the AMA Guides is mandatory under the Workers Compensation Act and Dr. Brown's opinion more closely followed the AMA Guides. Therefore, despite the inadequacy of the scheduled injury statute in accounting for claimant's wage loss and task loss, the Board finds the result reached by the ALJ was correct.

The Board finds that under the AMA's Guides (4th ed.) claimant's permanent impairment of function is 27 percent to the left lower extremity.⁵ Accordingly, claimant is limited to an award of permanent partial disability compensation based on a scheduled injury to the lower leg.

Award

WHEREFORE, the Appeals Board affirms Administrative Law Judge Bruce E. Moore's August 12, 2002 Award.

IT IS SO ORDERED.

Dated this _____ day of February 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation

⁵ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).